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Manitoba

Annual Report 2001

Office of the Commissioner
Law Enforcement Review Agency (LERA)

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MINISTER OF JUSTICE
ATTORNEY GENERAL

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

The Honourable Peter Liba
Lieutenant-Governor of Manitoba

May It Please Your Honour:

It is my pleasure to present the 2001 Annual Report of the Law Enforcement Review Agency.

This report details the agency's accomplishments and activities for the 12-month period ending December 31, 2001.

I trust this meets with your approval.

Yours truly,

Honourable Gord Mackintosh
Minister of Justice
Attorney General

Manitoba

Justice Law Enforcement Review Agency

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The Honourable Gord Mackintosh
Minister of Justice
Attorney General

Dear Minister:

I am pleased to submit my report for the period of January 1, 2001 to December 31, 2001 in accordance with Section 45 of ***The Law Enforcement Review Act***.

The Law Enforcement Review Agency (LERA) operates independently from the public and the police. ***The Law Enforcement Review Act*** clearly assigns responsibilities directly to the LERA commissioner and LERA decisions are made independently of government. The agency has always operated on this understanding.

Several developments occurred this past year that will further enhance the public's perception of LERA as an independent agency. One is a change in LERA's administrative reporting structure. The commissioner now reports directly to Criminal Justice Division's assistant deputy minister Greg Graceffo to improve efficiency and flow of information.

Another development is LERA's new offices, in a building separate from Manitoba Justice, at 420-155 Carlton Street in Winnipeg. The move has improved privacy for complainants and respondents and provides a more independent working environment for LERA staff. Other positive developments include the creation of a separate LERA budget for 2001/2002 and the complete revision of LERA's public information brochure.

Ultimately, LERA's mission is to deliver a judicious, timely, impartial, client-oriented service to the public and the police. This requires the continued support from both government and stakeholders. I am confident that the developments this past year have enhanced LERA's ability to fulfill that mission.

Yours truly,

George V. Wright
Commissioner

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INTRODUCTION

The Law Enforcement Review Act requires the commissioner to submit an annual report concerning the performance of his duties and functions to the minister and each municipality in the province with an established police department. The minister shall table the report in the Legislature.

LERA'S Mission Statement

The mission of the Law Enforcement Review Agency (LERA) is to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and police officers within its jurisdiction.

About LERA

What is LERA?

LERA is an independent, non-police agency, established under *The Law Enforcement Review Act* in 1985, to investigate public complaints about police.

LERA deals only with complaints about municipal police performance arising out of the performance of police duties. It does not investigate criminal matters. Criminal matters are referred to the Crown attorney's office.

LERA is staffed by a commissioner, registrar and professional investigators.

To whom does the act apply?

The act applies to any peace officer employed by a Manitoba municipal police department, including police chiefs. It does not apply to members of the RCMP.

Complaints about members of the RCMP should be directed to the Commission for Public Complaints against the RCMP, at **www.cpc-cpp.gc.ca** or by calling, toll-free, 1-800-665-6878. Complaints about RCMP members received by LERA will be forwarded to the CPC.

What does LERA investigate?

LERA investigates citizen allegations that municipal police officers have committed any of the following:

- abuse of authority, including:
    - making an arrest without reasonable or probable grounds
    - using unnecessary violence or excessive force
    - using oppressive or abusive conduct or language
    - being discourteous or uncivil
    - seeking improper monetary or personal advantage
    - serving or executing documents in a civil process without authorization

    - discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief or ethnic or national origin
- making a false statement or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms
- damaging property or failing to report the damage
- failing to assist where there is a clear danger to the safety of a person or property
- violating the privacy of any person within the meaning of *The Privacy Act*
- contravening any part of *The Law Enforcement Review Act* that does not specify a penalty for the violation
- assisting, counselling or causing any person to commit officer misconduct

Who may complain?

Any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba may file a complaint.

A complaint may also be filed on behalf of another person. LERA must obtain consent from that person before acting on the complaint.

How is a complaint filed?

A complaint must be made in writing and signed. Date, time, location and other details are important. LERA staff or members of the local police service will help prepare a complaint if asked.

A written complaint may be submitted directly to LERA, a police chief or any member of a municipal police department. Police will forward complaints to LERA.

Are there time limits?

The act requires a complaint to be submitted within 30 days of the incident. The commissioner may extend that limit if there are valid reasons for being unable to submit the complaint on time.

The commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or ongoing criminal investigations involving a complaint.

How is a complaint investigated?

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators conduct all inquiries they believe are necessary to uncover relevant evidence.

LERA may be contacted at any time to inquire about the status of a complaint. The commissioner remains open to discussion with all parties before making a final determination.

Preliminary screening of complaint

After the investigation, the commissioner will screen the complaint to determine whether there is a reason not to take further action on it. The act requires the commissioner to do this. A decision will be made by the commissioner to take no further action if any one of the following situations arise:

- the alleged conduct does not fall within the scope of any officer misconduct
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the commissioner decides to close the matter and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA at no cost to the complainant.

Does a complainant need a lawyer?

The complainant does not require a lawyer when dealing with LERA. The complainant and the police officer are entitled to legal representation during the process. They must arrange for such services themselves.

If a complainant applies for legal aid and is declined, he/she may, in exceptional circumstances, make a request to the minister of justice to appoint a lawyer to represent him/her at a hearing.

Respondent police officers are generally represented by a lawyer under employment contract.

How are complaints resolved?

The act provides several ways to resolve complaints.

Informal Resolution:

The commissioner must try to resolve the complaint through informal mediation. Both the complainant and the respondent officer must agree to this process before it can take place. If the complaint is resolved informally to the satisfaction of both the complainant and the respondent police officer, no further action is taken and no record of the incident is made on the officer's service record.

Admission of Disciplinary Default:

A respondent police officer can admit to the alleged officer misconduct. The commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

Referral to Judge for Hearing:

If a complaint cannot be resolved informally, and there is no admission of officer misconduct, the commissioner must refer the complaint to a provincial judge for disposition at a public hearing.

Penalties that may be imposed by the provincial judge on the respondent officer(s) as noted in *The Law Enforcement Review Act* are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

LERA as an Agency

The Law Enforcement Review Agency (LERA) is an agency of the Manitoba Department of Justice, Criminal Justice Division, mandated under *The Law Enforcement Review Act*.

The Lieutenant-Governor in Council charges the minister of justice, as a member of the executive council, with the administration of *The Law Enforcement Review Act*.

The Law Enforcement Review Act authorizes the Lieutenant-Governor in council to appoint a commissioner.

The commissioner carries out investigations in compliance with *The Law Enforcement Review Act* and has powers of a commissioner under Part V of *The Manitoba Evidence Act*.

LERA is staffed by a commissioner, a registrar and two investigators.

Operationally, the commissioner submits an annual report to the minister of justice.

LERA's address is:

420-155 Carlton Ave.
Winnipeg, Manitoba, R3C 3H8
Telephone: (204) 945-8667 or toll-free in Manitoba 1-800-282-8069
Facsimile: (204) 948-1014

E-mail: lera@gov.mb.ca

Website: www.gov.mb.ca/justice/lera

Activities

During the year, the commissioner and staff:

- participated in meetings and discussions with police chiefs and municipal officials
- attended Brandon Police Service Appreciation dinner
- participated in the Manitoba Bar Association's Law Day open house at the Manitoba Law Courts complex
- attended at the Brandon Police Service's Training Division and made a presentation to the Dakota Objibway Police Services (DOPS) recruit class
- attended the Winnipeg Police Service Training Division and made presentations to recruit classes
- attended the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE) conference in Quebec City on June 14 to 18, 2001
- accepted an invitation and made a presentation on civilian oversight to the East St. Paul Lions Club
- completed the move to new offices at 420 - 155 Carlton St., Winnipeg
- presented at the Manitoba Chiefs of Police meeting, hosted by Aboriginal and Community Law Enforcement
- attended the Manitoba Justice Association's annual breakfast
- met with members of the Winnipeg Police Association Board of Directors
- attended Winnipeg Police Service open house
- toured the Main Street Project Inc.
- accepted an invitation and made a presentation on civilian oversight to the American Society for Industrial Security - Prairie Chapter
- met with Manitoba Ombudsman Barry Tuckett and members of his staff
- attended graduation ceremonies for Winnipeg Police Service recruit class #132
- contributed to the Canadian Human Rights Commission booklet The Rights Path
- completed a new brochure on the Law Enforcement Review Agency

Acknowledgements

- Members of the public who make their complaints and concerns known to LERA
- Complainants and respondents who are able to resolve their differences by informal resolution
- Chiefs of police of Manitoba's municipal police services
- Police associations and members of Manitoba's municipal police services
- Legal counsel acting for complainants and respondents
- Manitoba Justice officials for their expertise in making LERA a more effective and efficient agency
- LERA's staff, whose competence and commitment are vital to LERA's success as a civilian oversight agency
- The many other stakeholders involved in the LERA process

Case Summaries

Informal Resolution of Complaints

> *Pursuant to section 15, the commissioner makes available to the complainant and respondent a process that can potentially allow them to come to an informal resolution of the complaint. This process is often, but not always, successful in resolving the matter. To be successful, the informal resolution process must satisfy each of the parties involved in the complaint. There is no single model by which a complaint can be successfully resolved informally. Sometimes, it is sufficient that the police officer explain to the complainant the responsibilities of the police and the reason a certain action was necessary. Other times, a complainant will seek an apology and the police officer will be prepared to offer it. In some cases, the heart of the complainant's concern is damage that was caused to certain property and the resolution involves reimbursement for those damages.*

The following are examples of complaints resolved informally in 2001:

- A woman went to the police to report a domestic dispute involving her children. Before the officer spoke with the woman, he phoned her estranged husband. When the officer did speak with the woman, he told her there was nothing he could do for her. She said the officer was very rude and raised his voice at her. She also said he took her estranged husband's side of the story.

The complaint was resolved with a meeting between the woman and the police officer.

- A woman complained the police went to her house to execute a search warrant. She said the door was unlocked but the police forced it open. The door handle was damaged and the door was dented by a battering ram. The police didn't find anything and left. The woman was very upset that her door was damaged and police made no effort to repair or report the damage.

The complaint was resolved when the woman was paid for the damages to her door.

- A woman said she was a passenger in a car that was stopped by the police. She was told to get out of the car. When she asked why, she was told to "Shut up and do a lot less talking and a lot more doing." She was taken to the police car and the police searched the car she had been in. A female officer was called to the scene and did a physical search of the woman beside the police vehicle. The woman said her civil rights were violated and the officer was rude and unprofessional.

The complaint was resolved with a meeting between the woman and the police officers.

- A woman and her daughter went to the police so the daughter could file a complaint of assault. The officer asked the girl to tell her story. He did not appear to listen to the girl. The woman and her daughter said the officer was not interested in the complaint. When the girl was finished, the officer told her she did not have a case. The woman was upset with the officer's attitude and reported the assault to another police office. The second officer they dealt with was very helpful. The woman said the first officer was very rude and insensitive.

The complaint was resolved with a meeting between the mother and the police officer.

Case Summaries

- A man said he was stopped by the police for a traffic violation. He asked the officer if there may be some mistake and the officer was rude, saying they could have this discussion in court. When the officer gave the man's driver licence back, it was missing Part 1 of the photo identification card. The man asked the officer about it and was told it had been returned. The licence was later found in the police car and returned to the owner. The man said the officer was rough, discourteous and unprofessional.

The complaint was resolved with a meeting between the man and the police officer.

Case Summaries

Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action

> *When the commissioner declines to take further action on a complaint, the complainant may apply to the commissioner to have the decision reviewed by a provincial judge. Section 13(2) of* The Law Enforcement Review Act *stipulates that the Commissioner must receive this application within 30 days after the date the decision was sent to the complainant.*

The following is a sample of these applications.

- A taxi driver picked up a fare and was in a line of slow moving traffic. He drove above the speed limit and passed traffic on the right side before getting in the centre lane. He then noticed police behind him with emergency lights flashing. He pulled over to an opening in the centre boulevard to let it by. The police stopped next to his taxi and another police car also pulled up, one officer yelled at him to pull over, so he went to a gas station followed by both the police cars. The taxi driver said that one officer yelled at him and demanded his licence. The other officer took his passenger out of the taxi to the car telling him not to pay the fare.

  The commissioner's office interviewed the police officer who said the complaint was not accurate. The taxi passenger was also interviewed and he said the police's story was correct. The second officer was not interviewed because he hadn't dealt with the taxi driver.

  The commissioner declined to take further action, as there was not enough evidence for a public hearing.

  The taxi driver asked to have a provincial judge review the commissioner's decision.

⚖ *DECISION: The provincial judge said the taxi driver was complaining about both police officers and sent the complaint back to the commissioner asking for the second officer to be interviewed. The commissioner did so and the taxi driver was told.*

****

- A man was stopped for jumping a stop sign. He said the police were rude and that one pushed him when he was put into the police car.

  The officers said this was not correct. They said the man had been searched before being put in the police car and one officer had put his hands on the man's elbow and head to help him get in the car.

  When the man was told what the officers said he asked to settle the matter informally. The officer was asked if he would meet the man to discuss the issue. The officer said he would not.

  LERA could not find the man and sent a registered letter to his last address telling him his complaint was dropped because they could not find him. When the man got the letter, he asked for a provincial judge to review the commissioner's decision. The man said he'd been away for several months and had not received the messages.

DECISION: The provincial judge said the man had an obligation to tell the commissioner where he could be found. The judge supported the commissioner's decision.

****

- A man was arrested for assaulting his wife under the Zero Tolerance policy. He said the officers abused their authority by arresting him and not looking into the matter further. The man said there had only been an argument and not an assault.

  The officers said the victim told them her husband had assaulted her and she had fresh signs of injury on her face. Based on this, they arrested the man.

  The commissioner took no further action because there was not enough evidence for a public hearing.

DECISION: The provincial judge agreed with the commissioner's decision.

****

- A woman and two friends met a group of people they didn't know. They started to argue and the woman and her female friends assaulted two men in the other group. The woman and her friend were intoxicated at the time. The woman's male friend tried to stop her and her friend from assaulting the others. Police were called and they arrested both women for intoxication.

  The woman said she had been treated unfairly because she was taken to the detox centre and her friend was taken home. The officers said the male victims did not want to lay charges. The officers also said the other woman was not as angry and threatening as her friend and was allowed to go home. The first woman continued to show anger and threaten one of the victims, so the police put her in jail to stop any more fighting.

  The commissioner did not take further action because there was not enough evidence for a public hearing. The woman asked for a provincial judge to review the commissioner's decision.

DECISION: The woman did not show up for the hearing and the complaint was dismissed.

****

- A man smashed out the window of another person's vehicle in a road rage incident. He was arrested and questioned by police. He said he had chest pains and was taken to hospital by ambulance. The man said the officers had been rude, had assaulted him and stolen money from him. The man had signed the prisoner log sheet saying how much money he had when arrested. The medical report said the man did not tell the doctor he had been assaulted by police.

  The officers said they did not assault the man, make rude comments or steal money from him. The ambulance crew said the officers did not make rude remarks in their presence.

The commissioner did not take further action because there was not enough evidence for a public hearing.

DECISION: The provincial judge said the LERA investigation had been quite thorough and the complaint was dismissed.

****

Case Summaries

Public Hearings before a Provincial Judge

Public hearings under The Law Enforcement Review Act (TLERA) *are held before provincial judges sitting persona designata. In this respect, they do sit in their usual capacity as a member of the provincial court. A public hearing will only take place after a matter has been referred by the commissioner under section 17.*

Where a public hearing has been referred by the commissioner, section 27(2) of TLERA *states: "The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default."*

The "clear and convincing evidence" standard was brought into the Act in 1992. It is not worded the same as the more traditional standards that are used in other contexts. In criminal cases the standard is "beyond a reasonable doubt" -- which was used in the act until 1992. In civil cases, the standard is "balance of probabilities."

Provincial judges have ruled in past cases that since LERA's hearings are, in fact, civil proceedings, the standard of proof was "balance of probabilities" and not "clear and convincing evidence."

The provincial judges also ruled that "clear and convincing evidence" simply speaks to the quality of evidence necessary to meet the standard of proof on a "balance of probabilities."

Public Hearings on the Merits of Complaints - 2001

- *Complaint:*

Two police officers stopped a man in his car acting on a report that the driver had a weapon, they ordered the man out of his car at gunpoint.

The man did not want them to search his car and said he was going to a nearby store to call a lawyer. He was told he was being held. When he was handcuffed, he physically resisted and was injured. A weapon was located and the man was arrested and taken to hospital for his injuries.

Officer Misconduct – Two Police Officers

Section 29(a) (ii) *The Law Enforcement Review Act*, abuse of authority by using unnecessary violence or excessive force on the complainant.

Disposition: The man's lawyer and the police's lawyer told the judge they had met and resolved the complaint. The judge declared the complaint to have been informally resolved.

Case Summaries

- *Complaint:*

A man was stopped for speeding. Alcohol was detected and he was arrested. He failed a roadside alcohol test. In the back seat of the police car, he answered police's questions, lit and smoked a cigarette, then lit another one.

One officer got out of the police car, opened the back door to pull the man out of the car. Frightened, the man grabbed the prisoner shield. The officer continued to pull on the man's arms when the other officer entered the car from the opposite side. Pepper spray was used to help get the man out of the police car and the man was injured.

Officer Misconduct - Two Police Officers

Section 29(a)(ii) *The Law Enforcement Review Act,* abuse of authority by using unnecessary violence or excessive force on the complainant.

Disposition: The commissioner wrote to the man saying the complaint was going to a provincial judge for a hearing. He was also told he may get legal aid if needed. If not, then the commissioner could ask the minister to provide a lawyer. The man said that he was not eligible for legal aid. The man wrote to the provincial judge saying he was not going ahead with his complaint. The judge said the file was closed.

****

- *Complaint:*

A man parked in front of a friend's house. A second car pulled around the man's car and stopped. During an argument, the driver of the second car identified himself as a police officer. The man was charged with several traffic offences. The officer was off duty in his own car at the time of the incident.

Officer Misconduct

Section 29(a)(iii), *The Law Enforcement Review Act,* abuse of authority by using oppressive or abusive conduct or language on the complainant.

Section 29(a)(iv), *The Law Enforcement Review Act,* abuse of authority by being discourteous or uncivil to the complainant.

Disposition: The man showed up for the morning session but did not return for the afternoon session. He was not able to cross-examine or present any argument.

The judge dismissed complaints of misconduct against the police officer.

****

- *Complaint:*

A man was walking with his girlfriend when a police officer motioned him to approach. The officer asked the man about an incident and he told them he was not involved. The officer then said he wanted a statement from him and the man agreed. The officer told the man he wanted to take the statement at the police station. The man said "no" and asked if he was under arrest. The police said he was not. The two officers took the man to the police station in their police car. At the police station, the man's personal property was taken and he was left in an interview room. The two officers returned and questioned him about the incident.

The man didn't know about it. The police officers made more serious accusations. The police slapped him in the face and would not let him call a lawyer. The man said that he was instructed to get down on his hands and knees in the corner of the room and, upon doing so, was kicked twice.

Later the same day, the complainant's property was returned and police drove him home. He was not charged.

Officer Misconduct - Two Police Officers

Section 29(a)(i), *The Law Enforcement Review Act,* abuse of authority by detaining the complainant without reasonable or probable grounds.

Section 29(a)(ii), *The Law Enforcement Review Act,* abuse of authority by using unnecessary violence or excessive force on the complainant.

Section 29(a)(iii), *The Law Enforcement Review Act,* abuse of authority by using oppressive or abusive conduct or language towards the complainant.

⚖ *Disposition: The man's lawyer and the police officers' lawyer told the judge, at the beginning of the hearing that the dispute had been settled with a meeting. The judge said the matter had been informally resolved.*

****

- *COMPLAINT:*

A woman was arrested and handcuffed by two police officers. She said while she was being driven to the police station, the driver slammed on the brakes and the woman hit the prisoner shield. The driver stopped the car and tightened the woman's handcuffs.

At the police station, the woman was put in a holding room. She said she was pepper sprayed while handcuffed. The woman was eventually taken to jail and when she was getting out of the police car she was slammed against the trunk and chipped a tooth.

Officer Misconduct

Section 29(a)(i) *The Law Enforcement Review Act,* abuse of authority by using unnecessary violence or excessive force on the complainant.

Disposition: The complainant's parents, legal counsel for the respondent and legal counsel for the commissioner attended the hearing.

Both parents addressed the hearing and stated that the complainant did not wish to proceed and requested that the complaint be withdrawn. The presiding judge allowed the complaint to be withdrawn in accordance with the complainant's wishes.

****

- *Complaint:*

A woman reported her daughter missing to police. Shortly after, she heard her daughter crying and saw her on the sidewalk. A police car was parked at the curb.

The woman went outside to get her daughter in front of the house. The police stopped her saying they wanted to confirm the girl's identity. The woman felt intimidated and scared. One officer tried to smell her breath for liquor; he did not verify her missing person's complaint on his computer; and he called her names. She wondered if she had been discriminated against because of her ethnic origin.

Officer Misconduct

Section 29(a)(iii) *The Law Enforcement Review Act,* abuse of authority by using oppressive or abusive conduct or language towards the complainant.

Section 29(a)(iv) *The Law Enforcement Review Act,* abuse of authority by being discourteous or uncivil towards the complainant.

Disposition: At the hearing, officer's lawyer asked for mediation and woman agreed. The judge approved and at a later hearing the judge was told the matter had been resolved.

****

- *Complaint:*

A man and his wife were driving his car and were stopped by the police. The police accused the man of racing, which he said was not true. They argued and the man was arrested for causing a disturbance. He was taken to the police station, called names and was eventually released. The man said he was falsely arrested and that his rights were violated.

Officer Misconduct – Two police officers

Section 29(a)(i), *The Law Enforcement Review Act,* abuse of authority by arresting the complainant without reasonable and probable grounds.

Section 29(a)(ii), *The Law Enforcement Review Act,* abuse of authority by using unnecessary violence or force toward the complainant.

Section 29(a)(iii), *The Law Enforcement Review Act*, abuse of authority by using oppressive or abusive conduct or language toward the complainant.

Section 29(a)(iv), *The Law Enforcement Review Act*, abuse of authority by being discourteous or uncivil toward the complainant.

Disposition: The man did not appear for the hearing. The police's lawyer told the judge the case had been resolved with a meeting and the man had signed a release.

****

- Complaint:

A man was arrested, handcuffed and taken to the police station. He was put in a room and told by a police officer to get down on his knees. The officer then grabbed the man's head and smashed him repeatedly against the cement floor. The man lost blood and hair and was taken to hospital.

Officer Misconduct- First Officer

Section 29(a)(ii) The Law Enforcement Review Act, abuse of authority by using unnecessary or excessive force.

Section 29(b) The Law Enforcement Review Act, abuse of authority by making a false statement

Section 29(f) The Law Enforcement Review Act, abuse of authority by being present and failing to assist a person in circumstances where there was a clear danger to the safety of that person

Officer Misconduct - Second Officer

Section 29(b) The Law Enforcement Review Act, abuse of authority by making a false statement

Section 29(f) The Law Enforcement Review Act, abuse of authority by being present and failing to assist a person in circumstances where there was a clear danger to the safety of that person

Disposition: As the man died before the hearing, the lawyer for the estate of the man, and lawyers for the officers and the commissioner appeared before the provincial judge

The man's lawyer asked the judge to declare the complaint resolved.

****

- Complaint:

A woman arrived home to find several uninvited people partying. She called the police to help get the people out of her house. The officer told her there was nothing he could do because nothing was missing from the house. As he was leaving, the woman slammed the door behind the officer hitting his heel. The officer re-entered the house, grabbed the woman by the neck and threw her against a wall, choking her. The woman was dragged across the back porch to the police car handcuffed and taken to jail.

Officer Misconduct

Section 29(a)(ii) The Law Enforcement Review Act, abuse of authority by using unnecessary or excessive force.

Disposition: The woman's lawyer told the judge she wanted to drop the complaint and the judge agreed.

****

Court of Queen's Bench

Following is an update on matters noted in LERA's 2000 annual report:

- In *Blair v. Soltys* – the respondent did not proceed to the court of appeal.
- In *Kennedy v. Manitoba* (LERA) – due to the applicant's death, the application was terminated.

STATISTICAL ANALYSIS

- LERA's jurisdiction extends to 14 police services with a police officer complement of 1,322. Total population served by the 14 police services is 708,384.

- Winnipeg Police Service accounts for 91 per cent of complaints made to LERA. Brandon Police Service accounts for seven per cent while other forces account for the remainder.

- There were 322 files opened this year. This is a decrease for the second straight year after a high of 415 in 1999. The five-year average for files opened is 351.

- The recording of complaints in Table 2 has been clarified from previous reports. The categories have been redefined to better reflect actual practise in the receipt of complaints.

- The 225 formal complaints filed are the highest ever recorded. By contrast, the number of complaints resolved at intake, without a formal complaint being filed, is at its lowest. This is directly attributable to improved client service by LERA staff at intake and after preliminary investigation. Clients need to be heard and while this is often very time consuming and requires patience, an improved level of client satisfaction is the result.

- The number of investigations carried over from the year 2000, combined with new complaints for the year 2001, resulted in an increase in total investigations conducted during the year. In 2000 there were 356 total investigations, while there were 436 in 2001.

- There was a significant increase in the number of investigations completed over the previous year, from 141 to 212.

- For 2001, there is an increase in the number of allegations of disciplinary defaults recorded in the five main categories: abuse of authority, arrest without reasonable or probable grounds, using unnecessary or excessive force, using oppressive or abusive conduct or language and being discourteous or uncivil. This is due to a greater scrutiny of complaints by LERA staff at intake. Where more than one allegation of disciplinary default is possible, a more concerted effort is being made to identify them at the outset.

- Complaints under the main category of abuse of authority include, but are not limited to, allegations of breaches of the *Canadian Charter of Rights and Freedoms*, unlawful arrests, unlawful searches, and breaches of *The Intoxicated Persons Detention Act*.

- The number of complaints alleging the misuse of pepper spray and handcuffs remains consistent.

- Incidents alleging injuries from use of force has increased.

- Informal resolution of complaints has dropped from the years 1999 and 2000. As a public service agency, LERA actively supports and, whenever possible, engages in alternative dispute resolution aimed at restoring social harmony between affected parties. This method of complaint resolution remains a priority.

- Complainants' requests for reviews by a provincial judge of the commissioner's decision increased. This can be due, in part, to the commissioner informing complainants more consistently and more clearly about their right to request a review.

STATISTICAL ANALYSIS

- LERA is not mandated to conduct criminal investigations. In matters where there is an inference of criminal misconduct, complainants may make a criminal complaint to the police service that has jurisdiction. Criminal complaints to the police increased from 11 in 1999 to 22 in 2000 and 25 in 2001. This is due to LERA staff better informing complainants of their option to make a criminal complaint to the police service.

- The average length of time to complete investigations increased to 13 months from 11 months in 2001. This increase is attributed to an increase in investigator workload. In addition, the time it takes police services to complete criminal investigations and advise LERA of the results creates an impact on time frames.

2001 Statistical Report – Data Tables

Table 1: Complaints by Police Service	Police Officers **	Population ***	2001 (n=225)	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)
Altona	6	3,434	0	1 (0.5%)	0	3 (2%)	0
Brandon	71	39,716	16 (7%)	22 (12%)	24 (11%)	19 (11%)	17 (13%)
RM East St. Paul	9	7,677	2 (1%)	0	0	0	0
Morden	7	6,142	0	0	1 (0.45%)	3 (2%)	0
Rivers	3	1,119	1 (0.5%)	0	0	0	0
Gilbert Plains	1	757	0	1 (0.5%)	0	0	0
Ste. Anne	3	1,513	0	1 (0.5%)	3 (1%)	0	0
Winkler	9	7,943	0	0	1 (0.45%)	1 (1%)	0
Winnipeg	1180	619,544	206 (91%)	165 (86%)	189 (87%)	141 (84%)	117 (87%)
Dakota Ojibway	26	5,923	0	1 (0.5%)	0	0	0
*RM Cornwallis	1	3,779	0	0	0	0	0
*RM St. Clements	2	9,115	0	0	0	0	0
*RM Victoria Beach	3	265	0	0	0	0	0
*RM of Whitehead	1	1,457	0	0	0	0	0
Total	**1322**	**708,384**	**100%**	**100%**	**100%**	**100%**	**100%**

*Supplementary police service – RCMP have primary responsibility

**Source: municipal police services

***Source: Statistics Canada, Indian and Northern Affairs, Canada and Dakota Ojibway Police Service

Table 2: Public Complaints	2001	2000	1999	1998	1997
Files opened	322	365	415	349	303
Formal complaint not received/closed after preliminary investigation	97	174	197	182	169
Formal complaint received	225	191	218	167	134

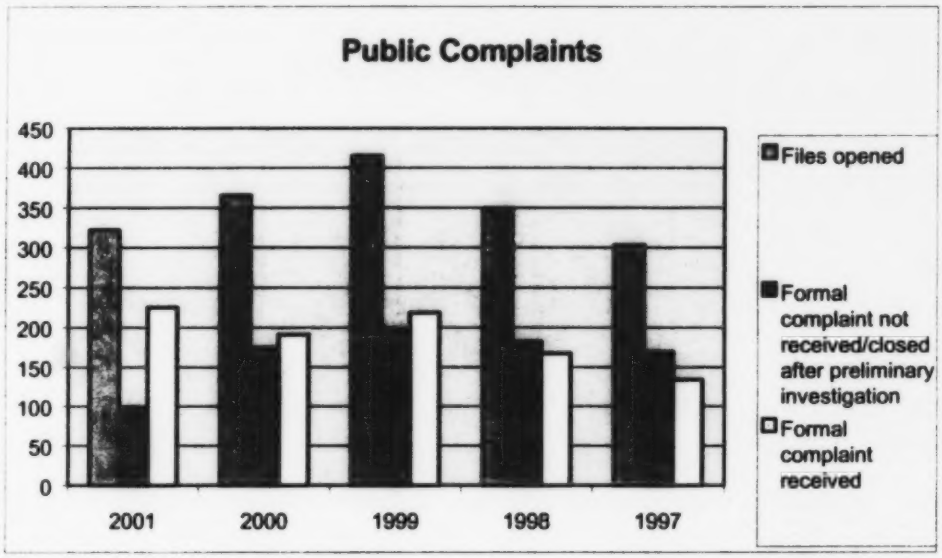

Table 3: Investigations Conducted	2001	2000	1999	1998	1997
Total investigations	436	356	375	370	185
Investigations completed - files closed	212	141	191	220	59
Ongoing investigations carried over as of December 31, 2001	224	215	184	150	126

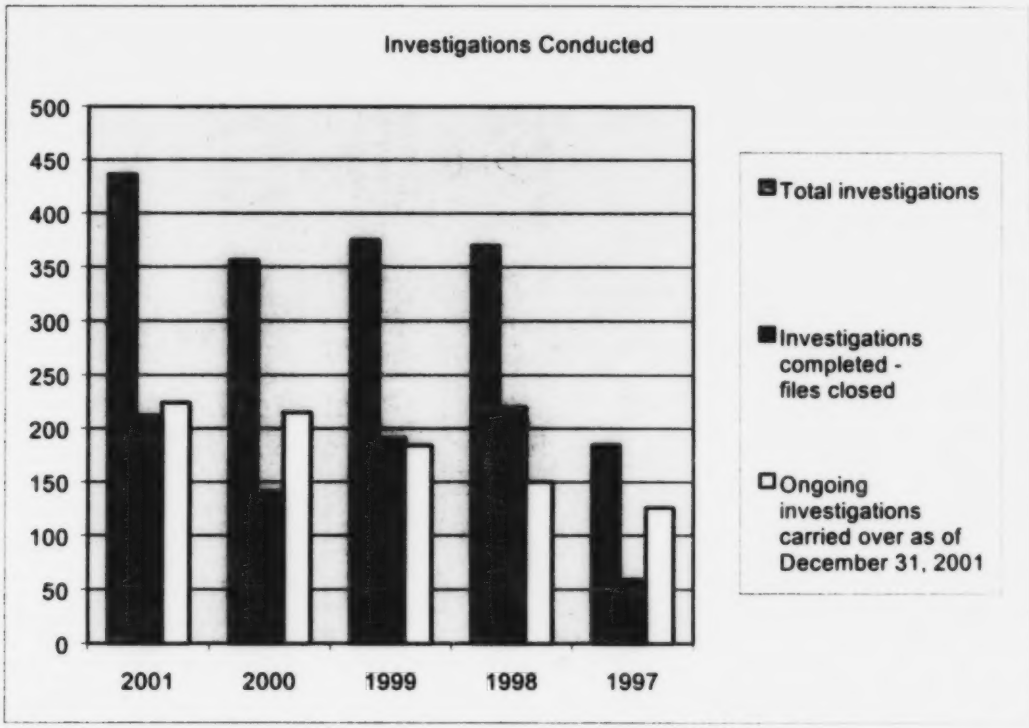

Table 4: Complainant's Allegations: Discipline Code Section 29 *The Law Enforcement Review Act*	**2001**	**2000**	**1999**	**1998**	**1997**
Abuse of authority sec. 29(a)	121	60	94	40	16
Arrest without reasonable or probable grounds sec. 29(a)(i)	25	18	7	16	7
Using unnecessary or excessive force sec. 29(a)(ii)	111	77	77	80	63
Using oppressive or abusive conduct or language sec. 29(a)(iii)	101	59	84	53	52
Being discourteous or uncivil sec. 29 (a)(iv)	82	76	71	45	34
Seeking improper personal advantage sec. 29(a)(v)		0	1	0	0
Serving civil documents without proper authorization sec. 29(a)(vi)	2	2	0	2	0
Discrimination (age, race, sex, all types) sec. 29(a)(vii)	15	12	9	6	5
Making false statement(s) sec. 29(b)	7	3	7	1	1
Improperly disclosing information sec. 29(c)	2	4	8	2	4
Failing to exercise care or restraint in use of firearm sec. 29(d)	2	1	1	2	2
Damaging property or failing to report damage sec. 29(e)	0	7	3	3	2
Failing to provide assistance to person(s) in danger sec. 29(f)	2	1	8	2	2
Violating person's privacy (under *The Privacy Act*) sec. 29(g)	0	1	2	1	0
Contravening *The Law Enforcement Review Act* sec. 29(h)	0	0	0	0	0

Table 5: Incidents Alleging Misuse of Pepper Spray			
2001 (n=3)	**2000 (n=1)**	**1999 (n=4)**	**1998 (n=6)**
1% of 225 complaints investigated Winnipeg = 2 Brandon = 1	.5% of 191 complaints investigated Winnipeg = 1	2% of 218 complaints investigated Winnipeg = 3 Brandon = 1	4% of 167 complaints investigated Winnipeg = 6

Table 6: Incidents Alleging Misuse of Handcuffs			
2001 (n=11)	2000 (n=9)	1999 (n=15)	1998 (n=12)
5% of 225 complaints investigated Winnipeg = 8 Brandon = 3	5% of 191 complaints investigated Winnipeg = 9	7% of 218 complaints investigated Winnipeg =13 Brandon = 2	7% of 167 complaints investigated Winnipeg = 6 Brandon = 2 Altona = 1

Table 7: Incidents Alleging Injuries from Use of Force			
2001 (n=70)	**2000 (n=50)**	**1999 (n=56)**	**1998 (n=44)**
31% of 225 complaints investigated Winnipeg =61 Brandon = 9	26% of 191 complaints investigated Winnipeg = 47 Brandon = 3	26% of 218 complaints investigated Winnipeg =52 Brandon = 4	26% of 167 complaints investigated Winnipeg =39 Brandon =5

Table 8: Disposition of Complaints	2001 (n=212)	2000 (n=141)	1999 (n=191)	1998 (n=220)	1997 (n=59)
Dismissed by commissioner as outside scope of act	25 (12%)	11 (8%)	24 (13%)	7 (3%)	1 (2%)
Dismissed by commissioner as frivolous or vexatious	8 (4%)	1 (0.7%)	6 (3%)	61 (28%)	10 (16%)
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	72 (34%)	42 (30%)	49 (26%)	72 (32%)	34 (57%)
Abandoned or withdrawn by complainant	88 (41%)	65 (47%)	79 (41%)	59 (27%)	8 (14%)
Resolved informally	8 (4%)	19 (12%)	22 (12%)	15 (7%)	1 (2%)
Public hearing before a provincial court judge	11 (5%)	3 (2%)	10 (5%)	6 (3%)	4 (7%)
Admission of guilt by respondent officer	0	0	1 (0.5%)	0	1 (2%)

Table 9: Legal Involvement of Complainants	2001 (n=225)	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)
No charges	114 (51%)	68 (36%)	112 (51%)	66 (39%)	44 (33%)
Traffic offences	12 (5%)	15 (8%)	16 (7%)	20 (12%)	16 (12%)
Property offences	4 (2%)	15 (8%)	8 (4%)	4 (2%)	10 (7%)
Intoxicated persons detention	12 (5%)	9 (5%)	12 (6%)	8 (5%)	10 (7%)
Cause disturbance	4 (2%)	3 (2%)	1 (0.45%)	5 (3%)	5 (4%)
Assault police officer/resist arrest	18 (8%)	13 (7%)	6 (3%)	8 (5%)	7 (5%)
Impaired driving	3 (1%)	4 (2%)	6 (3%)	6 (4%)	9 (7%)
Offenses against another person	6 (3%)	14 (7%)	16 (7%)	12 (7%)	8 (6%)
Domestic disputes	6 (3%)	12 (6%)	11 (5%)	6 (4%)	7 (5%)
Other	46 (20%)	38 (20%)	30 (14%)	32 (19%)	18 (14%)

Table 10: Reviews by Provincial Judge of Commissioner's Decision to Take No Further Action	2001	2000	1999	1998	1997
	13	5	13	10	5

Table 11: Referrals of Complaint to Crown for Criminal Investigation	2001	2000	1999	1998	1997
	0	1	2	3	1

Table 12: LERA Complaints Where Complainant Lodged a Criminal Complaint with Police	2001	2000	1999	1998	1997
	25	22	11	N/A	N/A

Table 13: Time Span of Ongoing Investigations Carried Over as of December 31, 2001							
YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
1997	0	0	0	0	0	1	1
1998	0	0	0	0	0	0	0
1999	0	0	0	0	0	11	11
2000	0	0	3	23	27	0	53
2001	80	44	35	0	0	0	159
Total	**80**	**44**	**38**	**23**	**27**	**12**	**224**

Table 14: Files Concluded in 2001 by Year of Origin		
Year	**Number of Files**	**Average Time to Close Investigation**
1998	5	34 months
1999	29	22 months
2000	112	14 months
2001	66	6 months
Average	212	13 months

Table 15: Length of Time to Complete Investigations	2001 (n=212)	2000 (n=141)	1999 (n=191)	1998 (n=220)	1997 (n=59)
1-3 Months	40	12	19	9	6
4-7 Months	45	44	71	38	4
8-12 Months	38	48	54	60	14
13-18 Months	51	27	25	52	26
19-23 Months	25	5	7	39	6
24+ Months	13	5	15	22	3
Average	13 Months	11 Months	10 Months	14 Months	14 Months

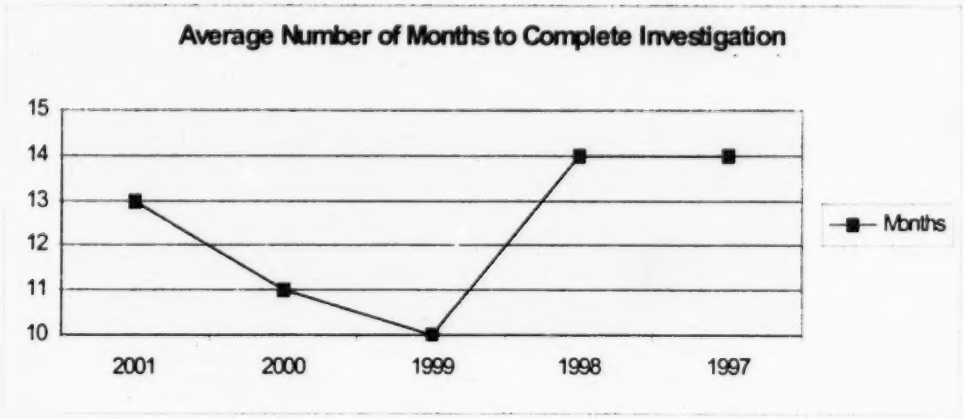

Table 16: Location of Incident	2001 (n=225)	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)
Street	79	58	74	63	61
Private residence	64	59	67	56	37
Public building/place	25	19	24	20	18
Police station	36	30	28	20	12
Other	21	25	25	8	6

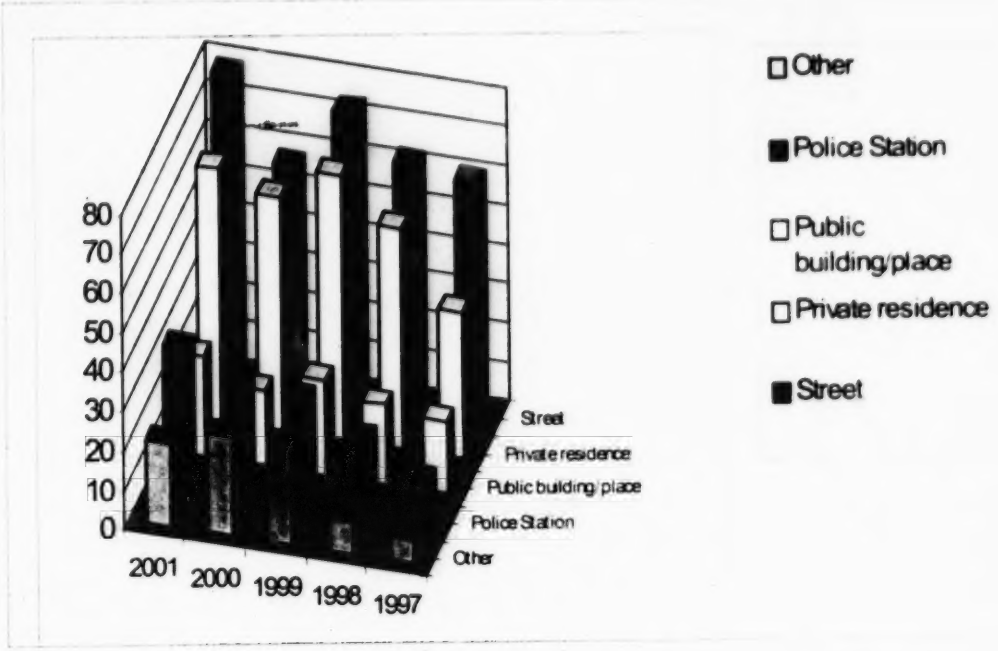

Table 17: Complainant Demographics	2001 (n=225)	2000 (n=191)	1999 (n=218)	1998 (n=167)	1997 (n=134)
Sex					
Male	155 (69%)	133 (70%)	143 (66%)	109 (65%)	104 (78%)
Female	70 (31%)	58 (30%)	75 (34%)	58 (35%)	30 (22%)
Age					
Over 50	24 (11%)	25 (13%)	24 (11%)	19 (11%)	13 (10%)
40 - 49	44 (20%)	53 (28%)	42 (19%)	36 (22%)	21 (15%)
30 - 39	45 (20%)	38 (20%)	55 (25%)	44 (26%)	33 (25%)
18 - 29	69 (30%)	55 (29%)	52 (24%)	41 (25%)	35 (26%)
Youth under 18	12 (5%)	8 (4%)	13 (6%)	12 (7%)	13 (10%)
Birth dates unknown	31 (14%)	12 (6%)	32 (15%)	15 (9%)	19 (14%)